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Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE Supreme Court of the United States

DANIEL C. BARRISH. ESQUIRE
Petitioner

v.

OFFICE OF DISCIPLINARY COUNSEL
Respondent

On Petition for Writ of Certiorari To The Pennsylvania Supreme Court

—

PETITION FOR WRIT OF CERTIORARI____

Daniel C. Barrish. Esquire

1912 Guernsey Avenue

Abington Pennsylvania. 19001

(215) 886-7870

QUESTION

Was Petitioner, a party attorney in Pennsylvania disciplinary proceedings, deprived of his Fifth Amendment and Fourteenth Amendment rights to due process and equal protection of the law when the Pennsylvania Supreme Court. designated both by statute and court rule as the final arbiter. with de novo jurisdiction, in attorney disciplinary matters, rendered its March 15, 2006. Order. suspending Petitioner from the practice of law for five years with no reference therein to any findings of fact or conclusions of law. independent or incorporated, the charges filed. violations determined or basis for penalty imposed?

PARTIES TO THE PROCEEDINGS

All parties to the proceeding in the Court whose judgment is sought to be reviewed are included in the caption.

RULE 29.6 CORPORATE DISCLOSURE STATEMENT

No party involved in this matter is a corporate entity thus negating the necessity of a Corporate Disclosure Statement.

OPINIONS

This Petition deals with two Orders of the Pennsylvania Supreme Court dated respectively March 15, 2006, and April 12, 2006, for which no opinions were written

STATEMENT OF JURISDICTION

A state court of last resort (Pennsylvania Supreme Court) has decided important questions of Federal law that have not been, but should be, settled by the United States Supreme Court, and has decided important Federal questions in ways that conflict with relevant decisions of this Most Honorable Court.

CONSTITUTIONAL PROVISIONS INVOLVED

This matter deals with Petitioner's deprivation of his right to "due process" assured him by the Fifth Amendment (Appendix "C") to the United States Constitution as derived through the Fourteenth Amendment. (Appendix "D") and his right to "equal protection of the law" as directly provided him by said Fourteen Amendment.

The Fifth Amendment to the United States Constitution reads in relevant part that no person can be "deprived of life, liberty, or property, without due process of law".

The Fourteenth Amendment reads in relevant part that no state "shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law."

STATEMENT OF THE CASE

Petitioner, the subject of a professional misconduct order, is an attorney who has actively practiced law in Pennsylvania for thirty-eight (38) years, who always has been in good standing with that state's Bar, and who had never been charged with, much less convicted of, any professional misconduct until the matter which brings this case to bar.

Pennsylvania has both by statute and rules of court an attorney disciplinary procedure involving appointed disciplinary counsel prosecuting matters before the likewise appointed Attorney Disciplinary Board. Disciplinary charges were lodged against Petitioner and on December 6, 2005, the said Board, after hearing, forwarded to the Pennsylvania Supreme Court a report concluding misconduct with penalty recommendation. Petitioner filed timely written exceptions; disciplinary counsel filed a timely reply. There was no oral argument (precluded by court rules) and on March 15, 2006, the Pennsylvania Supreme Court handed down a disciplinary order (Appendix "B"). Petitioner thereafter filed a timely Petition for Reconsideration which set forth the issues raised herein. By Order dated April 12, 2006, (Appendix "A"), the Pennsylvania Supreme Court denied the relief sought and it is from that Order that Petitioner seeks relief.

REASONS FOR GRANTING THE PETITION

There is no doubt in Pennsylvania that the Pennsylvania Supreme Court has de novo jurisdiction in attorney disciplinary matters. In a very recent Pennsylvania Supreme Court disciplinary decision dated December 28, 2005, captioned as In The Matter Of Julius C. Melograne, docketed as No. 820 Disciplinary Docket No. 3; Disciplinary Board No. 62 DB 2003, on page 3 the Honorable Madame Justice Newman noted that "in attorney discipline matters, we exercise de novo review. We are not bound by the findings and recommendations of the hearing committee or the Board, although we give both substantial deference." citing Office of Disciplinary Counsel v. Chung, 695 A.2d 405 (1997). In Office of Disciplinary Counsel v. Valentino, No. 306 Disciplinary Docket No. 3, No. 26 DB 97 Disciplinary Board, the Pennsylvania Supreme Court stated that "in attorney disciplinary matters, our review is de novo," citing Pa.R.D.E. 208 (e). ("review by the Supreme Court shall be de novo")

Notwithstanding its self-recognized de novo jurisdiction in attorney disciplinary matters, the Pennsylvania Supreme Court rendered its March 15, 2006, disciplinary order with no reference therein, either independent or by incorporation, to charges filed, violations determined, findings of fact, conclusions of law or basis for the punishment imposed.

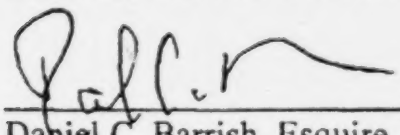
By so acting it is most respectfully submitted that the Pennsylvania Supreme Court deprived Petitioner "of life, liberty, or property, without due process of law," as guaranteed him by both the Fifth and Fourteenth Amendments to the United States Constitution by depriving him, inter-alia, and others, of the ability to determine whether in fact there actually was any such deprivation.

It is further most respectfully submitted that there is a further very significant Fourteenth Amendment violation caused by the March 15, 2006, attorney disciplinary order, because by failing actually to exercise, not just in name, its de novo jurisdiction, the Pennsylvania Supreme Court did "deny to any person within its jurisdiction the equal protection of the laws." In effect equal protection means that the Pennsylvania Supreme Court must treat similarly situated individuals in a similar manner and by failing in actuality to exercise its de novo jurisdiction it did not.

CONCLUSION

WHEREFORE Your Petitioner respectfully prays that this Most Honorable Court grant a Writ of Certiorari.

RESPECTFULLY SUBMITTED BY:



Daniel C. Barrish, Esquire

I declare under penalty of perjury that the foregoing statements are true and correct.

Executed on April 18, 2006

Daniel C. Barrish, Esquire

1912 Guernsey Ave.

Abington, Pa. 19001

Tele: 215.886.7870

Fax: 215.886.7871

Petitioner

APPENDIX A

IN THE SUPREME COURT OF PENNSYLVANIA

Office of Disciplinary Counsel.

Petitioner

Daniel C. Barrish

Respondent

No. 1103 Disciplinary Docket No. 3 – Supreme Court

No. 130 DB 2004 – Disciplinary Board

Attorney Registration No. 08718

(Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 12th day of April, 2006, the Petition for Reconsideration is denied and the Petition for Confirmation of Stay is dismissed as moot.

Madame Justice Baldwin did not participate in this matter.

A True Copy Patricia Nicola

As of April 12, 2006

Attest: Patricia Nicola /s/

Chief Clerk

Supreme Court of Pennsylvania

APPENDIX B

IN THE SUPREME COURT OF PENNSYLVANIA

Office of Disciplinary Counsel,

Petitioner

Daniel C. Barrish

Respondent

No. 1103 Disciplinary Docket No. 3 – Supreme Court

No. 130 DB 2004 – Disciplinary Board

Attorney Registration No. 08718

(Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 15th day of March, 2006, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 6, 2005, the Petition for Review and response thereto it is hereby:

ORDERED that Daniel C. Barrish be and he is suspended from the Bar of this Commonwealth for a period of five years. and he shall comply with all provisions of Rule 217 Pa. R.D.E.

It is furthered ORDERED that respondent shall pay costs of the Disciplinary Board pursuant to Rule 208(g). Pa. R.D.E.

Madame Justice Baldwin did not participate in this matter.

A True Copy Patricia Nicola

As of March 15, 2006

Attest: Patricia Nicola /s/

Chief Clerk

Supreme Court of Pennsylvania

Amendment V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX D

Amendment XIV

Section. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section. 3. No person shall be a Senator or

Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath. as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State. to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section. 4. The validity of the public debt of the United States, authorized by law. including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section. 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

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DANIEL C. BARRISH, ESQUIRE

Petitioner

v.

OFFICE OF DISCIPLINARY COUNSEL

Respondent

On Petition for Writ of Certiorari

To The Pennsylvania Supreme Court

SUPPLEMENTAL APPENDIX

DANIEL C. BARRISH. ESQUIRE

1912 Guernsey Avenue

Abington Pennsylvania, 19001

(215) 886-7870

Form DB-13
(4195)
The Disciplinary Board of the Supreme Court of Pennsylvania
First Floor
Two Lemoyne Drive
Lemoyne, PA 17043-1 226
(71 7) 731-7073

REQUEST FOR SUPREME COURT ACTION

Prothonotary
December 6, 2005
Supreme Court of Pennsylvania
Western District Office
801-City-County Building
Pittsburgh, PA 1521 9
Attention: John A. Vaskov, Esq.
Deputy Prothonotary

Re: Office of Disciplinary Counsel
v. DANIEL C. BARRISH
No. 130 DB 2004 - Disciplinary Board
Attorney Registration No. 0871 8
(Montgomery County)

Dear Prothonotary:
Pursuant to the provisions of Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the undersigned submits herewith eight (8) copies of the findings and recommendations of The Disciplinary Board of the Supreme Court of Pennsylvania in the above proceeding, together with the entire record. A suggested Order is also enclosed.

The mailing address of Mr. Barrish is: 1912 Guernsey Avenue, Abington, PA 19001. The Respondent is not represented in this proceeding.

Elaine M. Bixler /s/
Secretary of the Board

cc: (wlencl.)
Respondent - Daniel C. Barrish
Chief Disciplinary Counsel - Paul J. Killion
Deputy Chief Disciplinary Counsel - Paul J. Burgoyne
Disciplinary Counsel - Suzy S. Moore
Members of Hearing Committee:
Michael S. Dinney, Esq., Chair
Caitlin Curran Hatch, Esq.
William J. Gallagher, Esq.

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner
No._____Disciplinary Supreme Court
Docket Number
v. No. 130 DB 2004

Disciplinary Board
Attorney Registration
DANIEL C. BARRISH, No. 08718
Respondent
(Montgomery County)

ORDER

PER CURIAM:

AND NOW, this _____day of _____, 20__, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 6, 2005, it is hereby

ORDERED that DANIEL C. BARRISH be and he is SUSPENDED from the Bar of this Commonwealth for a period of five years, and he shall comply with all the provisions of Rule 21 7 Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g). Pa.R.D.E.

BEFORE THE DISCIPLINARY BOARD OF
THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY
COUNSEL, Petitioner No. 130
DB 2004

v. Attorney
Registration

No. 08718

DANIEL C. BARRISH,
Respondent
(Montgomery County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE
AND JUSTICES OF THE SUPREME
COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court

with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On August 31, 2004, Office of Disciplinary Counsel filed a Petition for Discipline against Daniel C. Barrish, Respondent. The Petition charged Respondent with violating Rules of Professional Conduct 4.1 (a), 8.2(b), 8.4(c) and 8.4(d) in connection with his actions of making false allegations of judicial misconduct in pleadings to the Supreme Court of Pennsylvania and in an article published over the Internet against the Honorable Phyllis W. Beck of the Superior Court of Pennsylvania and the Honorable Rhonda Lee Daniele of the Court of Common Pleas of Montgomery County. On September 23, 2004, Respondent filed an Answer to the Petition for Discipline. A disciplinary hearing was held on December 3, 2004, January 10, 2005, and March 8, 2005, before a District II Hearing Committee comprised of Chair Michael S. Dinney, Esquire, and Members Caitlin Curran Hatch, Esquire, and William J. Gallagher, Esquire. Respondent appeared pro se. Following the submission of briefs by the parties, the Hearing Committee filed a Report on June 22, 2005, finding that Respondent engaged in professional misconduct as charged in the Petition for Discipline and recommending that he be disbarred. Respondent filed a Brief on Exceptions on July 11, 2005, and requested oral argument before the Disciplinary Board. Petitioner filed a Brief Opposing Exceptions on July 28, 2005. Oral argument was held on August 16, 2005, before a three member panel of the Disciplinary Board chaired by Robert E.J.

Curran, Esquire, with Laurence H. Brown, Esquire, and C. Eugene McLaughlin. This matter was adjudicated by the Disciplinary Board at the meeting on September 12: 2005.

11. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Suite 1400,200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.
2. Respondent, Daniel C. Barrish, was born in 1941 and was admitted to practice law in the Commonwealth in 1967. He maintains his office at 1912 Guernsey Avenue, Abington PA 19001.
3. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.
4. Respondent has no prior history of discipline.
5. In 2002, Respondent represented Thomas Tracy in a custody case captioned Thomas Edward Tracy v. Andrea Lynn Tracy (Cockfield) filed in the Montgomery County Court of Common Pleas.
6. The Honorable Rhonda Lee Daniele presided over the custody trial and on August 2, 2002 ruled in Ms. Cockfield's favor.

7. On September 4, 2002, Respondent appealed the decision to the Superior Court of Pennsylvania.
8. The Honorable Phyllis W. Beck was a member of the three judge panel that decided the appeal. The other members were the Honorable Joseph A. Del Sole and the Honorable Robert A. Graci.
9. The panel quashed the appeal because Respondent failed to comply with requirements of applicable rules of appellate procedure.
10. Respondent filed a Petition for Reconsideration that was denied.
11. Respondent filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania. The Court denied the Petition.
12. Respondent filed numerous King's Bench Petitions, none of which were granted.
13. On September 4, 2003, Respondent posted a letter/article that was disseminated over the Internet. In the article, Respondent made the following accusations:
1. The Tracy custody case was "fixed" by the trial judge;
2. The Tracy custody case was "fixed" in the Superior Court by the Superior Court judge:
3. There were three cases which Judge Daniele "fixed", and almost certainly others; and
4. "Judge Daniele was obligated (money talks!) to include all sorts of bizarre provisions in her final order" in the Tracy custody case.
14. On August 11, 2003, Respondent filed an Application for Extraordinary Relief Pursuant to Rule 3309 (the Application) in the Supreme Court of Pennsylvania.
15. Respondent attached to the Application a signed Verification certifying that the facts set

forth in the Application were "true and correct to the best of [Respondent's] knowledge, information and belief', and that the Verification was "taken, subject to the penalties of 18 Pa.C.S. s4909 relating to unsworn falsification to authorities."

16. In the Application, Respondent made the following accusations:

1. Judge Beck directed the Deputy Prothonotary to either not docket the Tracy matter or if it were docketed, to delay its disposition until a time when Judge Beck would be sitting on a panel, meaning late April and/or May;

2. Judge Beck approached Judge Montemuro to take his place on the panel and she did in fact do so; and

3. Judge Beck persuaded two panel members not to read the record, Order and Opinion for which she provided a summary.

17. On March 24, 2004, Respondent filed an Application for Reconsideration (the second Application) in the Supreme Court of Pennsylvania.

18. Respondent attached to the second Application a signed Verification certifying that the facts set forth in the second Application were "true and correct to the best of [Respondent's] knowledge, information and belief', and that the Verification was "taken, subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities".

19. In the second Application, Respondent made the following accusation against the Honorable Phyllis W. Beck:

1. "Judge Beck seriously violated Canons of Ethics",

2. Judge Beck "filed seemingly intentional false financial statements",
3. Judge Beck is "surely unable to maintain her credibility in the legal community because of her actions", and
4. Judge Beck is "someone of questionable virtue".

20. In the second Application, Respondent made the following accusations against the Honorable Rhonda Lee Daniele:

1. Judge Daniele "has made a mockery of the Judiciary by openly and notoriously repeatedly violating serious filing obligations", and
2. Judge Daniele serves "at the risk of injuring the public, especially the children."

21. Judge Daniele denied fixing the Tracy case.

22. Judge Daniele denied fixing any case.

23. Judge Daniele denied knowing either plaintiff or defendant prior to the Tracy case.

24. Judge Daniele learned of Respondent's September 2003 Internet article from her children.

25. Judge Daniele denied intentionally making misrepresentations on her case reporting Forms 703.

26. Judge Daniele did not report certain cases on case reporting Form 703 because she was not required to do so.

27. On one occasion in regard to a case other than the Tracy case, the Court Administrator's Office directed Judge Daniele to include cases where she was waiting for transcripts and for memoranda from parties on case reporting Form 703 and she did so thereafter.

28. Judge Daniele did not include the Tracy case on Form 703 because it was not ripe for reporting.
29. Judge Daniele never filed intentionally false financial statements.
30. Judge Daniele did not include certain properties on her yearly financial reporting form because the form did not require reporting the properties.
31. Judge Daniele did not respond to Respondent's allegations in his pleading to the Supreme Court of Pennsylvania because she was represented by counsel from the Administrative Office of Pennsylvania Courts who handled the matter.
32. Judge Daniele has served on the Court of Common Pleas of Montgomery County since 1995.
33. Judge Daniele has served as Administrative Judge of Family Court since 2000.
34. Judge Daniele has approximately 2,500 case assigned to her docket at any one time.
35. Judge Daniele ordered the parties, including the daughter of Respondent's client, to participate in counseling because of the history of Respondent's client's relationship with his two other children.
36. Whenever Judge Daniele includes children in her custody orders, a Petition for Governability is a remedy when a child does not comply with the custody order.
37. Judge Daniele has committed children to Montgomery County Children and Youth Services when the children have failed to comply with a custody order.
38. Judge Daniele has directed therapy sessions in other custody cases, particularly

when there is valid reason for concern about the relationship between the child and parent.

39. The President Judge of Montgomery County Court of Common Pleas received copies of Respondent's allegations concerning Judge Daniele's Form 703s and financial forms from Respondent.

40. The President Judge did not discipline or discuss the Form 703s and financial forms with Judge Daniele after receiving information from Respondent.

41. The Court Administrator of the Supreme Court of Pennsylvania, Zygmont Pines, Esquire, received copies of Respondent's allegations concerning Judge Daniele's Forms 703s and financial forms from Respondent in Respondent's Petition to the Supreme Court and under cover of letters from Respondent.

42. Mr. Pines did not contact, discipline or discuss the Form 703s and financial forms with Judge Daniele.

43. Respondent communicated the accusations against Judge Daniele which he included in his Internet article and court pleadings to numerous entities and individuals, including but not limited to the list serve of the Family Law Division of the Montgomery Bar Association; letters to the Montgomery County Commissioners; and letters to Montgomery County Court of Common Pleas Judges Rodgers and Corso.

44. Respondent stated in his letter to the Montgomery County Commissioners, dated September 10, 2004, that Judge Daniele has taken bribes since her first year on the bench in 1995.

45. Judge Daniele was aware of Respondent's statements in his September 10, 2004 letter to

the County Commissioners and denied ever taking a bribe.

46. Judge Daniele believes she has never had any other unhappy litigant attack her professional integrity by saying she "threw" or fixed a case because she was being paid to do so.

47. No one from the federal government, the Federal Bureau of Investigation, or the Montgomery County District Attorney's Office contacted Judge Daniele concerning Respondent's accusations.

48. Respondent's accusations against Judge Daniele have caused her distress: have taken her time in loss of sleep and in thinking as to whether she filled out the forms involved correctly.

49. Judge Daniele is concerned about Respondent's conduct because someone may believe his statements. It is constantly on her mind that her personal business is "splashed" in articles and pleadings.

50. Judge Beck denied fixing the Tracy appeal.

51. Judge Beck denied approaching the Superior Court Prothonotary and asking to be placed on the Tracy appeal panel.

52. Judge Beck denied directing the Superior Court Deputy Prothonotary to either delay docketing or to not docket the Tracy appeal.

53. Judge Beck denied directing the delay of the disposition of the Tracy appeal until she would be sitting on the panel.

54. Judge Beck denied approaching Judge Montemuro or any other member assigned to the original Superior Court panel to take their place on the panel.

55. Judge Beck denied persuading the other judges not to read the lower court opinion.
56. Judge Beck denied providing a summary of the record to the other judges on the panel.
57. Judge Beck denied violating the Canons of Ethics.
58. Judge Beck denied filing intentionally false financial statements.
59. Judge Beck was assigned to sit on the Superior Court panel in the Tracy appeal because one of the judges initially assigned, Judge McEwen, had a fractured ankle.
60. On February 4, 2003, Charles O'Connor, the Deputy Prothonotary for the Superior Court for the Eastern District of Pennsylvania, scheduled the Tracy appeal for March 13: 2003, before a panel including Judge Del Sole, Judge Graci and Judge McEwen.
61. On March 7, 2003, Judge McEwen's secretary called David Szewczak, the Prothonotary, and advised that Judge McEwen would not be available due to a fractured ankle.
62. On March 7, 2003, Mr. Szewczak appointed Judge Beck to serve on the Tracy appellate panel.
63. Judge Beck did not know the plaintiff or defendant in the Tracy case before her assignment to the panel.
64. Because of the emergency assignment to the panel, this was the first time in twenty years where Judge Beck had not read the briefs filed by the litigants in advance of the argument.
65. The appellate panel decided to quash the appeal because Respondent had not filed a proper brief and had failed to comply with the

requirements of the appellate rules in filing the brief.

66. The appellate panel found that Respondent's brief did not comply with the requirements of Pa.R.A.P. 2101 and 2111 because Respondent's "vituperative discussion of three issues preserved for appeal was devoid of citation to case law, specific references to places in the record and organized legal argument."

67. The Superior Court panel did not grant reargument and reconsideration of its decision to quash the appeal in response to Respondent's Petition for Reconsideration because Respondent did not properly tell the panel what mistake had been made in compliance with the rules of appellate procedure.

68. Judge Beck has served for 24 years on the Superior Court of Pennsylvania.

69. Judge Beck has served as a Senior Judge since 1999.

70. Judge Beck participated in a total of 225 Superior Court opinions and memoranda in 2004.

71. Judge Beck was particularly concerned about Respondent's brief to the Superior Court in the Tracy case because he made statements about Judge Daniele including the following". . .the trial judge who conducted the Lower Court proceedings in this matter should immediately be removed from the bench because of a viciously contrived Court Order which both mocks the law and cavalierly disregards the best interests of children and others, whether such action resulted from ignorance of the law, mental illness, substance abuse and/or judicial misconduct."

72. Judge Beck had never before seen statements attacking a judge personally, such as the ones Respondent made against Judge Daniele in his brief to the Superior Court.

73. Judge Beck became aware of Respondent's September 2003 Internet article from Judge Daniele.

74. Judge Beck was aware that Respondent communicated the accusations contained in the Internet article against Judge Beck to Governor Rendell, Dean Reinstein, the Dean of Temple University Law School, Lynn A. Marks, Esquire, the head of Pennsylvanians for Modern Courts, and Judge Beck's colleagues: Judge Del Sole, President Judge of the Superior Court of Pennsylvania, Senior Judge McEwen, Judge Ford Elliot, and Judge Panella.

75. President Judge Del Sole did not contact or reprimand Judge Beck concerning Respondent's allegations.

76. Judge Beck denied filing intentionally false financial statements.

77. Judge Beck did not report the $250,000 award her husband received from the Heinz Foundation because it was turned over to the Beck Foundation.

78. Judge Beck did not report her role in Third Avenue Funds because she did not believe she was required to do so under the reporting rules.

79. Judge Beck has suffered embarrassment before her colleagues, sleepless nights and concerns and questions from family members.

80. Respondent testified at the disciplinary hearings.

81. Respondent did not know who paid money to Judge Daniele and Judge Beck to allegedly "fix" the Tracy case.

82. Respondent presented no evidence that anyone paid money to Judge Daniele and Judge Beck to "fix" the Tracy case.

83. Respondent did not know how much money was paid to the Judges to "fix" the Tracy case.

84. Respondent presented no evidence as to how much money was paid to the Judges.

85. Respondent did not know how the Tracy case was "fixed" by the Judges and presented no evidence on that issue.

86. Respondent did not know how Judge Daniele fixed other cases besides the Tracy case and presented no evidence to support this allegation.

87. Respondent did not know how Judge Beck was paid to "fix" the Tracy appeal or who paid her to do so, nor did he present evidence concerning this issue.

88. Respondent did not know whether Judge Beck directed the Deputy Prothonotary to either not docket the Tracy matter or if it were docketed, to delay its disposition until a time when Judge Beck would be sitting on a panel.

89. Respondent did not present evidence other than his unsupported conclusions, speculations and suppositions concerning Judge Beck's assignment to the panel in the Tracy case.

90. Respondent did not know whether Judge Beck approached Judge Montemuro to take his place on the panel.

91. Respondent did not know whether Judge Beck persuaded two panel members not to read the record, Order and Opinions for which she provided a summary.

92. Respondent presented no evidence concerning the Superior Court panel's determination in the Tracy appeal.
93. Respondent did not present evidence other than his unsupported conclusions, speculations and suppositions concerning Judge Daniele's filling out of case reporting Form 703.
94. Respondent did not present evidence other than his unsupported conclusions, speculations and suppositions as to Judge Daniele's yearly financial reports.
95. Respondent did not present sufficient evidence as to how Judge Daniele's reporting of cases on Form 703 and financial information related to her ruling in the Tracy case.
96. Respondent did not present sufficient evidence as to how Judge Beck's reporting of financial information related to her participation on the Superior Court panel in the Tracy case.
97. Respondent did not conduct a reasonably diligent inquiry before making the allegations he made in the Internet article and in sworn pleadings to the Supreme Court of Pennsylvania and the Supreme Court of the United States.
100. Respondent filed complaints with the Judicial Conduct Board against Judge Beck and Judge Daniele.
101. The Judicial Conduct Board advised Respondent that his complaints against Judge Beck and Judge Daniele had been dismissed by letter dated January 21, 2005.
102. Respondent does not believe that he has violated any Rules of Professional Conduct and is not remorseful for his actions.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 8.2(b) - A lawyer shall not knowingly make false accusations against a judge or other adjudicatory officers.
2. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
3. RPC 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

Respondent did not violate RPC 4.1(a), which states that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person. Respondent published accusations on the Internet based on his personal impressions and opinions that his case was fixed. These were not material facts concerning the representation of his client

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the Petition for Discipline filed against Respondent charging him with professional misconduct arising out of false accusations against two judges. Respondent represented Thomas E. Tracy in a custody case filed in the Montgomery County Court of Common Pleas. The case was assigned to Honorable Rhonda Lee Daniele. In August 2002, Judge Daniele entered a custody order directing the parties to engage in counseling and directing other aspects of the ongoing custody arrangement. In response, Respondent filed a Petition for Reconsideration that was denied. Respondent then filed an appeal to the Superior Court of Pennsylvania. A Superior

Court panel comprised of Honorable Joseph Del Sole, Honorable Robert A. Graci and the Honorable Phyllis W. Beck quashed the appeal because Respondent failed to comply with the requirements of the applicable rules of appellate procedure. Respondent filed a Petition for Reconsideration that was denied. Respondent filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania. The Court denied the Petition.

Respondent accused Judge Daniele and Judge Beck of fixing the custody case, of being dishonest, of filing false case reporting forms, of filing false financial reports, and in the case of Judge Daniele, of taking bribes. Respondent published these accusations in an article over the Internet. Respondent included the accusations in numerous letters to a variety of individuals, including but not limited to: judges, the Governor of Pennsylvania, the Dean of Temple University Law School, and the Montgomery County Commissioners. Respondent also swore to the truthfulness of the accusations in pleadings to the Supreme Court of Pennsylvania and the Supreme Court of the United States.

After three days of hearing, the Hearing Committee filed a Report and found that Respondent violated Rules of Professional Conduct 4.1 (a), 8.2(b), 8.4(c), and 8.4(d). The Committee recommended that Respondent be disbarred.

Respondent took exception to the Report and requested oral argument. The basis for his exception is that there are no specific findings of fact made by the Committee, but instead a reference to Petitioner's proposed findings. Respondent contends that as there are no valid

Findings of Fact, there can be no valid Conclusions of Law; therefore, the charges against Respondent should be dismissed. Review of the Report of the Hearing Committee demonstrates that the Committee made findings of fact by adopting the findings made by Petitioner in its Brief to the Hearing Committee. The Committee further stated that Respondent acknowledged his statements in the Joint Stipulation of Facts. While the Committee did not make numbered findings, certainly their adoption of Petitioner's proposed findings was appropriate and clearly intended to be the findings of the Committee. For these reasons the Board rejects Respondent's exceptions and recommendation to dismiss the charges against him.

The burden of proving professional misconduct lies with Petitioner, which must prove the violations by a preponderance of the evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Griasby, 425 A.2d 730 (Pa. 1981). Petitioner alleges that Respondent violated RPC 4.1 (a) by his conduct in publishing false statements about two judges over the Internet, disseminating them to numerous third parties and including them in court pleadings. Specifically, RPC 4.1(a) states that "In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person." The Board's review of the record demonstrates that Respondent made accusations against two judges but did not make a false statement of material fact or law to a third person. Respondent's accusations constitute his opinions or impressions that the

Tracy case was fixed, but do not constitute material facts. A material fact is one which is essential to the case and without which it could not be supported. Black's Law Dictionary 881 (5m ed. 1979). For this reason RPC 4.1 (a) does not apply to the instant matter; accordingly, that charge against Respondent is dismissed.

The Board's review of the other Rule violations charged demonstrates that Petitioner met its burden of proof. RPC 8.2(b) prohibits a lawyer from knowingly making false accusations against a judge. By continually making false accusations against Judge Daniele and Judge Beck, Respondent violated this rule. RPC 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. A prima facie case is made where the record establishes that the misrepresentation was knowingly made, or made with reckless ignorance of the truth or falsity of the representation. Office of Disciplinary Counsel v. Anonymous Attorney A, 714 (A.2d 402 (Pa. 1998). The record establishes that Respondent routinely and repeatedly acted recklessly by stating as facts things of which he was ignorant. RPC 8.4(d) prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice. Respondent's continued attacks against Judge Daniele and Judge Beck without evidence of the truth of the accusations and without an objective reasonable basis for the accusation prejudices the administration of justice.

The record supports the findings of violations of Rules of Professional Conduct 8.2(b), 8.4(c) and 8.4(d). This matter is ripe for the

determination of discipline. It is appropriate for the Board to consider both aggravating and mitigating factors in determining the appropriate sanction. At the disciplinary hearings Respondent maintained his position as set forth in his accusations and failed to make any apology or retraction. Instead, Respondent continued to make disparaging and inappropriate remarks against the two judges. For example, when asked what personal gain Judge Daniele received for deciding the Tracy case as she did, Respondent stated "Obviously, she had to have received something because only an idiot who knew nothing about the law would come down to a decision like that, to embarrass herself if it was ever published." (N.T. 489). Respondent does not grasp the reason why his conduct was wrong and violated the Rules of Professional Conduct. As an attorney in this Commonwealth for 38 years, Respondent should understand the deleterious effects on the legal system of making unfounded accusations against judicial officers. In view of the continuing nature of Respondent's misconduct, his lack of disciplinary history does not weigh heavily in his favor. Disciplinary cases involving accusations against judicial officers have been considered by this Board and the Supreme Court. The two controlling cases are Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000) and Office of Disciplinary Counsel v. Price, 732 A.2d 599 (Pa. 1999). The Court entered a five year suspension in each case. Mr. Price filed three court documents that contained false allegations against two district justices and an assistant district attorney. Mr. Price

was found to have falsely completed portions of Department of Public Welfare forms designated to be completed by a medical provider by signing the forms as "Dr. Neil Price, J.D.". Mr. Price accused a district justice of participating in an undercover effort against Price to curry favor with state police and the attorney general and of engaging in official oppression by colluding with a state trooper in allowing a baseless lawsuit. Mr. Price made the statements in reaction to the District Justice serving as a witness against Price in a then pending criminal action. Mr. Price accused a second district justice of abusing his office by fixing citations from other jurisdictions, assuming a prosecutorial bias to ingratiate him with disciplinary authorities and others, and sexually harassing several constituents. Mr. Price accused the assistant district attorney of acting with malice against Price because Price purportedly discovered that the assistant district attorney had embezzled a private client's judgment. Mr. Surrick made accusations of case fixing against three judges. In that case, the Supreme Court rejected a subjective approach which would permit a respondent to escape responsibility by simply stating that he personally believed the accusations to be true. The Court held that "An attorney proceeds recklessly when he presents assertions without any indicia of the accuracy of those assertions, or without a minimal effort to investigate the accuracy thereof." Surrick, 749 A.2d at 447. Respondent drew unwarranted conclusions from benign events and seemingly willful misinterpretations of filing requirements and then published his false accusations in signed

court pleadings, over the Internet and in letters to numerous judges without any evidence of truth or any reasonable objective basis to make the accusations. This behavior was reckless.

Respondent was not able to provide any evidence to support any of his accusations against Judge Daniele and Judge Beck. Respondent has based his entire pursuit of these matters on his illogical deduction that there is no reason for the decisions made by the judges other than judicial impropriety. Respondent has continued to make disparaging remarks against the judges, sees himself as unjustly accused, and does not acknowledge his behavior or its impact on the judicial system. He presented no character evidence or independent testimony that supported his allegations. Respondent's misconduct calls into question his ability to continue practicing law in a fit manner. In light of this serious misconduct and the controlling case law, the Board is persuaded that a suspension of five years is appropriate.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Daniel C. Barrish, be suspended from the practice of law for a period of five years. It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,
THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA
By: Robert E. J. Curran , Board Member

08-31 -2004 16 Copies of Petition for Discipline - 130 DB 2004
$56.00
09-23-2004 16 Copies of Answer to Petition
$464.00
06-22-2006 16 Copies of Report and Recommendations of Hearing Committee
$96.00
07-26-2005 16 Copies of ODC's Brief Opposing Exceptions
$208.00
08-1 0-2005 16 Copies of Joint Stipulations of Fact
$40.00
11/23/2004 Transcript from Pre-Hearing Conference of 11/03/04
$238.50
12-28-2004 Transcript from Hearing held on 12/3/2004
$1,898.75
02-02-2005 Transcript from Additional Hearing held on 1/10/05
$2,348.25
04-13-2005 Transcript from Depositional Hearing held on 3/08/2005
$253.00
09-09-2005 Transcript from Oral Argument held on 8/16/2005
$ 470.50
TOTAL AMOUNT DUE $6.073.00
Make Check Payable to PA Disciplinary Board
PAYMENT IS REQUIRED UPON RECEIPT OF ORDER